



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS ARNOLD ENGINEERING DEVELOPMENT CENTER (AFMC)
ARNOLD AIR FORCE BASE, TENNESSEE

26 July 2002

MEMORANDUM FOR POTENTIAL OFFERORS

FROM: AEDC/PKM

SUBJECT: Presolicitation Notice for Advisory Multi-Step Process - Organizational Conflict of Interest (OCI) Mitigation Plans

1. The Air Force intends to conduct a full and open competition for the operation, maintenance, information management and support of AEDC. This will include permitting competition from companies that engage in the design, development or production of aerospace or other systems or major subsystems of a type normally developed, tested or evaluated in AEDC facilities. While Organizational Conflict of Interest (OCI) issues are a significant consideration, they may be mitigated with an acceptable mitigation plan.
2. Throughout the market research phase of this acquisition, industry encouraged us to discuss and possibly resolve OCI issues as early as possible in the acquisition cycle. From that feedback and our discussions with other Government organizations, we've decided to initiate a process following the principles of FAR 15.202 Advisory Multi-Step Process. Based on the information you submit, we'll advise you (solely from an OCI perspective) whether we believe your company will be a viable competitor. Our advice may allow you to make a better decision about whether to participate in this acquisition. Notwithstanding the advice provided by the Government in response to your proposed plan, you may still elect to submit a proposal.
3. Since ensuring the continued trust of our customers is of paramount importance, we must understand the safeguards and mitigation strategies necessary to ensure any perceived or actual organizational conflict of interest is avoided, neutralized, or mitigated. Ultimately, only companies submitting acceptable mitigation plans will be eligible for award. Who should submit a draft OCI mitigation plan? We encourage every company who expects to submit an offer as a prime contractor or as a member of a contractor teaming arrangement to review the proposed OCI language and decide whether the potential for real or perceived organizational conflicts of interest exist. If so, then you should prepare a plan and submit it for review. If you decide that no real or perceived conflict exists, please tell us the basis for your decision and we will tell you whether we agree. We intend to review your proposed plan and assess its risk and content. A thoughtful, comprehensive plan addressing in detail the elements listed below is our expectation. We've prepared a simple flowchart showing the iterative process we will use to review your plan and give you feedback (see Attachment 1).
4. Your draft OCI mitigation plan should be based on the requirements of FAR Subpart 9.5 Organizational and Consultant Conflicts of Interest, the draft Section H clause (Attachment 2), and the draft language that will be used in Section's L & M (Attachment 3). To enable us to evaluate your proposed plan, the following must be specifically addressed:

a. Disclosure of business activities of itself, its affiliates, its team members, and affiliates of its team members which create an organizational conflict of interest or the appearance of an OCI. Identify corporate business activities that:

(1) Correlate with aerospace or other systems or major subsystems of a type normally developed, tested or evaluated in AEDC facilities. Characteristic examples of the above-mentioned aerospace systems and major subsystems include aircraft, aircraft engines, missiles, liquid or solid propellant rockets, spacecraft, reentry vehicles, and power generating systems;

(2) Correlate with technologies and products which may be incorporated by others into systems or major subsystems of a type normally developed, tested or evaluated in AEDC facilities;

(3) Present other actual or apparent conflicting role(s) that might bias your judgment in relation to work for the Department of Defense;

(4) Create any unfair competitive advantage your company might gain as a result of performing this contract.

b. Provide evidence of facts and circumstances that you believe mitigate or address concerns related to the appearance and/or presence of an OCI.

c. Explain your proposed approach to mitigating the effects of any apparent or actual conflicts of interest arising out of the business activities disclosed in response to paragraph 4(a) above. The approach should be specific and detailed with respect to:

(1) Segregation of troublesome affiliations and/or activities from the offeror;

(2) Non-disclosure/proprietary-information-protection agreements used by the offeror including examples which divulge sufficient information describing its purpose to indicate the scope of each agreement, the identity of the parties, the number of offeror employees authorized to receive information under the agreement, its duration, key terms and conditions, and points of contact for the agreements to provide past performance information as needed by the Government;

(3) Proposed event/timing, elapsed time for concluding, and the step-by-step process for consummating proposed agreements with other companies or organizations testing at AEDC, and past performance references to validate the feasibility of the approach;

(4) Proposed intra-company and inter-company agreements or policy designed to ensure that the offeror's proposed approach is obligatory on the offeror's parent, subsidiary, other affiliated, and successor entities and subcontractors;

(5) Proposed process and procedures to be followed should a team member's, team member's affiliate, or your ownership or corporate structure change;

(6) Proposed remedies or administrative actions the Government should take should you purposely or inadvertently violate the OCI clause;

(7) Any additional relevant measures you deem prudent and/or necessary.

d. Comments regarding the draft OCI clause or proposed Section L & M language and suggested changes.

5. The Government will treat all submissions as proprietary under 18 U.S.C. §1905 and protect the proposed information accordingly. Interested parties should submit proposed mitigation plans no later than 26 August 2002. We'll provide initial feedback by 10 September 2002.

6. Please call me at 931-454-6886 if you have any questions.

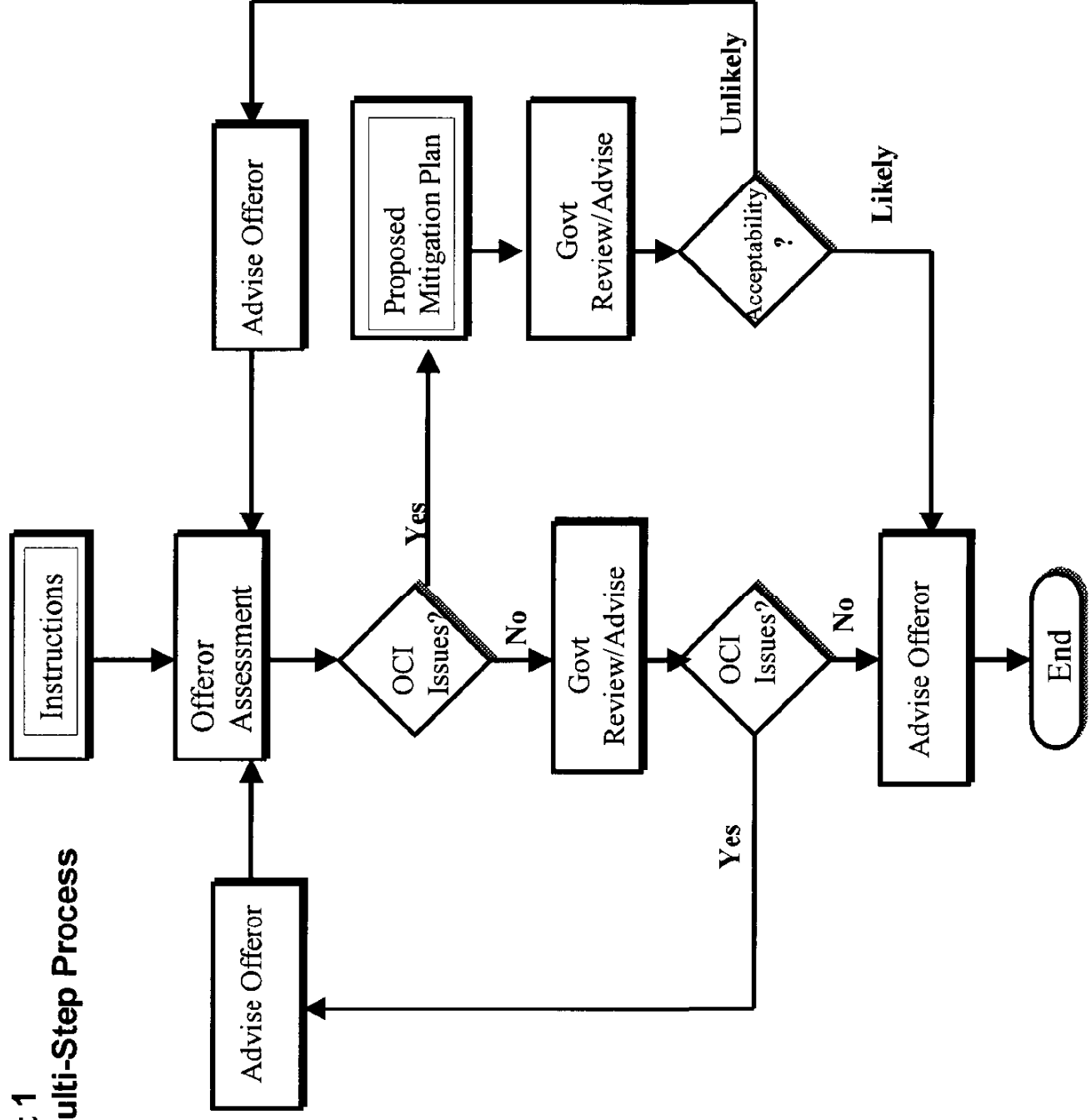
A handwritten signature in black ink, appearing to read 'John L. Sutton', is written over a horizontal line.

JOHN L. SUTTON
Contracting Officer
Chief, Contract Management Branch

3 Attachments

1. Advisory Multi-Step Process
2. Draft OCI Clause
3. Draft Section L & M Language

Attachment 1
Advisory Multi-Step Process



H.xxx. ORGANIZATIONAL CONFLICTS OF INTEREST (DRAFT)

a. The purpose of this clause is to ensure that:

(1) In providing services to the Government and its customers under this contract, the Contractor's objectivity and judgment are not biased because of its present, or future financial, contractual, organizational, or other interests;

(2) The Contractor does not obtain an unfair competitive advantage by virtue of its access to non-public Government information regarding the Government's program plans and resources;

(3) The Contractor does not obtain any unfair competitive advantage by virtue of its access to proprietary or competition sensitive information belonging to others; and

(4) The Contractor ensures no bias or unfair competitive advantage exists while aggressively addressing any perception issue that may arise.

b. Definitions

(1) The term "*organizational conflicts of interest*" means that a relationship or situation exists where an offeror or a contractor (including chief executives and directors, to the extent that they will or do become involved in the performance of the contract, and proposed consultants or subcontractors where they may be performing services similar to the services provided by the prime) has past, present, or currently planned interests that either directly or indirectly (through a client contractual, financial, organizational, or other relationship) may relate to the work to be performed under a Department contract which (i) may diminish its capacity to give impartial, technically sound, objective assistance and advice, or (ii) may result in it having an unfair competitive advantage. It does not include the normal flow of benefits from the performance of the contract.

(2) The term "*affiliates*" means business concerns which are affiliates of each other when either directly or indirectly one concern or individual controls or has power to control another, or when a third party controls or has the power to control both.

(3) The term "*Contractor*" as used in this clause shall include (i) the corporate or other entity executing this contract with the Government as well as such entity's parent, subsidiary, other affiliated, and successor entities and (ii) said Contractor's subcontractors who, (a) operate AEDC test or evaluation facilities or (b) handle, receive, reduce, interpret, or transmit data obtained, utilized, or produced in conjunction with testing or evaluation.

(4) "*Proprietary Information*" shall mean information that a company desires to protect against unrestricted disclosure and unauthorized use, and shall include (i) that written or recorded information which a company designates as proprietary by appropriate stamp or legend at the

time of first disclosure, and (ii) that information which is orally or visually disclosed to the Contractor and which is identified as proprietary at the time of disclosure, is promptly reduced to or identified in writing and marked as proprietary, and forwarded to the Contractor.

(a) Proprietary information shall not include information which (i) was known to the Contractor prior to its receipt from a company or the Government; or (ii) was independently developed by the Contractor without access to a company's proprietary data; or (iii) is or becomes public knowledge without the fault of the Contractor; or (iv) has been lawfully obtained by the Contractor without restrictions on disclosure from a source other than a company or the Government; or (v) is or becomes available to a third party from a company on an unrestricted basis.

(b) Other limitations set forth in this contract may apply to the use of information and data. The burden of proof as to the applicability of any of the above exceptions shall rest on the Contractor.

(c) This definition of "proprietary information" applies only to the application of this OCI clause.

c. To avoid, neutralize, or mitigate the potential conflict of interest, the Contractor shall not, during performance of the contract, engage (as a prime contractor or tier I/II subcontractor) in any design, development or production of aerospace or other systems or major subsystems of a type normally developed, tested or evaluated in AEDC facilities without an approved OCI Mitigation Plan. The Contracting Officer may grant waivers if a potential/perceived conflict clearly does not compromise the Government's fundamental intent to safeguard against (i) conflicting roles which might bias the Contractor's judgment/objectivity; (ii) providing the Contractor an unfair competitive advantage in Government acquisitions; and/or (iii) constraining the transfer of critical proprietary information required to effectively execute the test mission at AEDC. Requests for waiver under this clause shall be directed in writing to the Contracting Officer and shall include a full description of the requested waiver and the reasons in support thereof. If it is determined to be appropriate and in the best interests of the Government, the Contracting Officer shall grant such waiver in writing.

d. When the Contractor has access to proprietary information of other companies, the Contractor must agree with each company to protect this information from unauthorized disclosure. The Contractor shall enter into written agreements for the protection of the proprietary information of others and provide these agreements to the Contracting Officer for review and approval. The Contractor shall not be permitted to use the information in supplying the system, or its components, procured either by formal advertising or negotiation, as a direct result of that study, test or advice. In addition, the Contractor is not permitted to use the proprietary data in performing, for the Department of Defense, any competitively obtained contract for any additional study or studies in the same or a closely related field.

e. The Contractor must thoroughly inculcate in its employees, through formal training in company policies and procedures, an awareness of the philosophy of FAR Subpart 9.5 to the end that they will be disciplined in the absolute necessity of refraining from divulging proprietary

data, trade secrets, confidential information or restricted data from other companies received in connection with work under this contract to any unauthorized person.

f. The Contractor shall require its employees to sign written agreements prohibiting proprietary information disclosure except in accordance with a Government-approved plan. This written agreement shall in substance provide that such employee will not, during their employment by the Contractor or thereafter, disclose to others or use for their own behalf, trade secrets, confidential information, or restricted data received in connection with the work under this contract. The agreement will acknowledge the employee is trained regarding handling proprietary information and discuss penalties for violations.

g. If the Contractor discovers an actual or potential organizational conflict of interest not previously considered and adequately mitigated under this clause and the Government-approved OCI Mitigation Plan, the Contractor shall make a prompt and full disclosure in writing to the Contracting Officer. This disclosure shall include a description of the action the Contractor has taken or proposes to take, or actions recommended to be taken by the Government, in order to avoid, neutralize or mitigate the conflict.

h. The contractor shall report any violation or suspected violation of this clause or the Government-approved OCI Mitigation Plan, whether by its own personnel or those of subcontractors, to the Contracting Officer. This report shall include a description of the violation and the actions the Contractor has taken or proposes to take to mitigate and avoid repetition of the violation. After conducting such further inquiries and discussions as may be necessary, the Contracting Officer and the Contractor shall agree on appropriate corrective action, if any, or the Contracting Officer shall direct such action, subject to the terms of this contract.

i. OCI violations are a significant contract performance issue. Violations of the OCI Mitigation Plan or this clause may have consequences ranging from award fee decrements, contract termination, suspension and debarment, or other appropriate remedies or administrative actions.

j. The Contractor may propose changes to the approved OCI Mitigation Plan. Such changes are subject to the mutual agreement of the parties and will become effective only upon incorporation by contract modification or written approval of the revised plan by the Contracting Officer.

k. The Contractor shall include paragraphs (a) through (j) of this clause in every subcontract, purchase order, or other agreement. Exceptions must be approved in writing by the Contracting Officer.

SECTION L LANGUAGE - ORGANIZATIONAL CONFLICTS OF INTEREST (DRAFT)

a. The potential for organizational conflicts of interest (OCIs) exists during the performance of this contract. If the Contractor engages in any design, development or production of aerospace or other systems or major subsystems of a type normally developed, tested or evaluated in AEDC facilities, or reasonably similar facilities, a potential conflict of interest arises. Also, since the Contractor will be responsible for major aspects of test operations from inception through post-test documentation, access to proprietary information of other companies or organizations could give rise to an OCI. Potential OCIs are identified in Special Contract Requirement H-xxx, Organizational Conflicts of Interest. Accordingly:

(1) It is the responsibility of each offeror to identify potential OCIs that may be encountered during the performance of this contract. Each offeror must submit as a part of its proposal a written mitigation plan that covers all of the potential OCIs that may now exist or may be encountered during performance of the contract. The plan should reflect the results of the Advisory Multi-Step Process, updated with any relevant changes to the Contractor's and each team member's or team member affiliate's particular circumstance.

(2) Only Contractors submitting acceptable mitigation plans will be eligible for award.

b. Special Contract Requirement H-xxx, Organizational Conflicts of Interest, may be modified during discussions.

SECTION M LANGUAGE (DRAFT)

The following language may be contained under a subfactor in Section M:

- The proposal demonstrates a thorough understanding of all facets of the Government's organizational conflict of interest (OCI) concerns and demonstrates the adequacy of the offeror's plan for identifying, avoiding, neutralizing, or mitigating existing and potential conflicts that generate the concerns enumerated in FAR Part 9.5. The offeror proposes a sound process and procedures in implementing OCI mitigation measures to be expressly incorporated into the contract which provide genuine, substantive amelioration of OCI concerns; provides an administratively efficient means to achieve the proposed measures in a timely manner responsive to AEDC requirements; promotes government confidence in the enforceability/effectiveness of proposed measures; and promotes a reasonable expectation that AEDC's customers will have confidence in the enforceability/effectiveness of the proposed measures.